IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

Crl.MC.No. 477 of 2007()

AGAINST THE ORDER DATED 18/01/2007 IN CMP 245/2006 IN
CC.35/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II(MOBILE),ALAPPUZHA
CR.NO.89/95 OF ALAPPUZHA SOUTH POLICE STATION

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PETITIONER:

V.MURALIDHARAN NAIR,
S/O.VELAYUDHAN PILLAI, SUPERINTENDENT OF POLICE,
NARAKAPARAMBU HOUSE, PURAVEEDU P.O., ALLEPPEY-9.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:
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1. SAJU.M.ANTONY S/O.ANTONY,
KOZHIPPARAMBIL HOUSE, MULLAKKAL, ALLEPPEY.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.477 of 2007

Dated this the 23rd day of February 2007

O R D E R

The petitioner is a Circle Inspector of Police. He faces allegations interalia under Section 326 read with 34 I.P.C. Cognizance has been taken on the basis of a private complaint filed by the respondent/complainant. After cognizance was taken, the petitioner came to this court with the grievance that the cognizance taken offends the mandate of Section 197 Cr.P.C. The petitioner's plea for protection under Section 197 Cr.P.C was earlier not considered by the learned Magistrate and the revisional court but this court observed in the order dated 22/01/2004 in Crl.M.C.No.3148 of 2000 that the petitioner can claim discharge under Section 245 Cr.P.C.

2. The petitioner, accordingly, raised a claim for discharge under Section 245(2) Cr.P.C. The learned Magistrate took up the matter for consideration and by the impugned order (copy of which is produced as Annexure-IV) directed that the said question - as to the requirement of sanction under Section 197 Cr.P.C shall be raised as a point and considered later at the time of final argument.

2. The learned counsel for the petitioner submits that the approach made by the learned Magistrate is absolutely incorrect and runs counter to the law and also the specific directions issued by this court in Annexure-II. I find merit in that contention. Cognizance cannot be taken by a court if the requirement of Section 197 Cr.P.C are not satisfied. The bar is against taking cognizance and not against continuing with the proceedings. The learned Magistrate, at the stage of taking cognizance, is bound to consider whether sanction under Section 197 Cr.P.C is necessary or not. Cognizance is taken ex parte and therefore, at that point of time, it is possible that the learned Magistrate may not have applied his mind pointedly to that question. But when the accused receives summons, he is certainly entitled to contend that the ex parte cognizance taken against him is bad for the reason that it offends Section 197 Cr.P.C. When that objection is raised, it is impermissible for the court to relegate consideration of that question at any later stage. If that were permitted, that would render sterile the protection under Section 197 Cr.P.C which mandates the cognizance cannot be taken except with the sanction of the

court. This position can be reiterated in Sankaran Moitra v. Sadhna Das [AIR 2006 SC 1599]. I am, therefore, of the opinion that Annexure-IV order is grossly incorrect. I am, in these circumstances, of the opinion that it is not necessary to wait for issue and return of notice to the respondent/complainant in the matter.

3. This Criminal Miscellaneous Case is, in these circumstances, allowed. The learned Magistrate is directed to consider CMP.No.245 of 2006 wherein the claim for discharge under Section 245(2) Cr.P.C has been raised on the ground that the cognizance taken is bad for want of sanction under Section 197 Cr.P.C straight away on the basis of the materials presently available in the proceedings.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006